
Costs Decision

Site visit made on 6 October 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Costs application in relation to Appeal Ref: APP/U4610/D/20/3257452 936 Broad Lane, Coventry CV5 7FG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms A Foster and Mr M McDaide for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of planning permission for retrospective planning application for raised patio, plus new section of trellis on top of existing fence.
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Decision

1. The application for an award of costs is permitted in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant considers that the Council has behaved unreasonably by: incorrectly interpreting its own development plan policy; placing excessive weight on an out of date SPG; grossly misinterpreting permitted development regulations; failing to consider an important material consideration i.e. the fall back position of implementing permitted development rights; and introducing an irrelevant and non-material issue into the consideration of the original application.
4. The reason for refusal relates to the impact of the proposal on the living conditions of the occupiers of no. 938 Broad Lane having particular regard to matters of privacy. The reason for refusal also states that the proposal is contrary to Policy DE1 of the adopted Coventry Local Plan as well as paragraph 130 of the National Planning Policy Framework (the Framework) both of which would appear to relate primarily to the character and appearance of an area.
5. However, these policies do also relate to good quality design which according to the National Design Guide should promote quality of life for the occupants and users of buildings. The Framework also acknowledges that there is overlap

between design and its role in creating better places in which to live and work (paragraph 124) and creating places with a high standard of amenity for existing and future users (paragraph 127 f)). Consequently, I am not satisfied that this constitutes unreasonable behaviour by the Council.

6. Similarly, whilst the SPG may be old, this does not necessarily mean that it is out of date. In any event I do not have sight of this SPG and so I do not have sufficient evidence before me to be able to reach a conclusion as to whether or not the Council behaved unreasonably in this regard.
7. I also acknowledge that the Council misinterpreted permitted development regulations. However, I am not convinced that this was anything other than an error in planning judgement and so I do not consider that this amounts to unreasonable behaviour either.
8. Finally, in relation to the Council's failure to consider the fallback position that would allow the removal and replacement of the proposed raised patio/decking under permitted development rights, given that the Council continued to refuse permission for it even after it granted a lawful development certificate leads me to conclude that this left the appellant with no option other than to lodge the appeal. Consequently, I find that the Council behaved unreasonably with respect to the substance of the matter under appeal.
9. Accordingly, in the overall planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary the Guidance and the appellant has been faced with the unnecessary expense of lodging the appeal.
10. As a result, I find the Council has behaved unreasonably by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
11. I therefore conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Coventry City Council shall pay to Ms A Foster and Mr M McDaide, the full costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Coventry City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Coyne

INSPECTOR